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ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

STEVEN SWARTWOOD; JOANNA  
 SWARTWOOD; R.S., a minor and D.S., a  
 minor, by and through their Guardian Ad  
 Litem, Judy Swartwood

Plaintiffs

v.

COUNTY OF SAN DIEGO; SAN DIEGO  
 HEALTH AND HUMAN SERVICES  
 AGENCY; POLINSKY CHILDRENS  
 CENTER; MAYA BRYSON; WENDY  
 CURIEL; KELLY ROLLINS; SUSAN  
 SOLIS; AND DOES 1 TO 50, Inclusive

Defendants.

CASE NO: 12cv1665W(BGS)

**FIRST AMENDED COMPLAINT FOR  
 DAMAGES**

1. Assault;
2. Battery;
3. False Imprisonment;
4. Violation of Civil Rights;
5. Monell Related Claims;
6. Intentional Infliction of Emotional Distress;
7. Violation of State Civil Rights (CC§43)
8. Violation of State Civil Rights(CC§52.1)

DEMAND FOR JURY TRIAL

STEVEN SWARTWOOD; JOANNA SWARTWOOD; R.S., a minor; D.S., a minor,  
 by and through their Guardian *Ad Litem*, Judy Swartwood, allege as follows:

1. Pursuant to this Court's local Rule 8-1, Plaintiffs assert that the statutory or other basis for the exercise of jurisdiction in this United States Federal District Court is based upon a federal question asserted under 42 U.S.C. 1983 as to violations of Plaintiffs' rights under the U. S. Constitution and laws, including those under the First, Fourth and

1 Fourteenth Amendments, as well as supplemental jurisdiction for Plaintiffs' state claims  
2 asserted pursuant to 28 U.S.C. 1367(a); all of which Plaintiffs request be tried and heard  
3 before a jury.

4 2. At all relevant times mentioned in this Complaint, Plaintiffs were residents of  
5 San Diego County, California.

6 3. JUDY SWARTWOOD has been appointed the Guardian ad Litem for the  
7 minors, R.S., and D.S., in this action.

8 4. At all times mentioned herein, the COUNTY OF SAN DIEGO was and is a  
9 public entity (hereinafter "COUNTY").

10 5. At all times mentioned herein, the SAN DIEGO COUNTY HEALTH AND  
11 HUMAN SERVICES AGENCY (hereinafter "H.H.S.A."), was and is a subdivision or  
12 entity of the COUNTY OF SAN DIEGO.

13 6. At all times mentioned herein, the POLINSKY CHILDRENS CENTER  
14 (hereinafter "POLINSKY"), was and is a subdivision or entity of the COUNTY OF SAN  
15 DIEGO.

16 7. At all times mentioned herein, Defendant MAYA BRYSON (hereinafter  
17 "BRYSON"), was an officer, agent, and employee of H.H.S.A.

18 8. At all times mentioned herein, Defendant WENDY CURIEL (hereinafter  
19 "CURIEL"), was an officer, agent, and employee of H.H.S.A.

20 9. At all times mentioned herein, Defendant KELLY ROLLINS (hereinafter  
21 "ROLLINS"), was an officer, agent, and employee of H.H.S.A.

22 10. At all times mentioned herein, Defendant SUSAN SOLIS (hereinafter "SOLIS"),  
23 was an officer, agent, and employee of H.H.S.A.

24 11. Plaintiffs are ignorant of the true names and capacities of those Defendants sued  
25 herein as Does 1 through 50, Inclusive, and therefore sue them by such fictitious names.  
26 Plaintiffs will amend this Complaint to show the true names and capacities of said DOE  
27 Defendants when the same are ascertained.

28 12. Plaintiffs are informed and believe and, based upon such information and belief,

1 allege that each of the Defendants is responsible in some manner for the events and  
2 happenings referred to herein and was the legal cause of injury and damages to Plaintiffs  
3 as herein alleged.

4 13. Plaintiffs are informed and believe and, based upon such information and belief,  
5 allege that, at all times herein mentioned, each and every Defendant was the agent and/or  
6 employee of their co-Defendants, and each of them, acting at all relevant times herein  
7 under color of the authority of a governmental entity under the statutes, ordinances,  
8 regulations, customs and usage of the State of California and/or the United States  
9 Constitution and related laws.

#### 10 **COMMON ALLEGATIONS**

11 14. This action arises from an investigation and proceedings of a juvenile  
12 dependency investigation pursuant to Chapter 2 (commencing with Section 200) of Part  
13 1 of Division 2 of the Welfare and Institutions Code initiated or conducted by Defendants,  
14 COUNTY, THROUGH ITS SUBDIVISION HHSA Agency, regarding Plaintiff minors  
15 R.S. (Born in 2010) and D.S. (Born in 2008), and affecting their parents, Plaintiffs  
16 STEVEN SWARTWOOD and JOANNA SWARTWOOD (hereinafter "STEVEN" and  
17 "JOANNA" respectively).

18 15. Plaintiffs STEVEN and JOANNA were married in 2004 . At the time of the  
19 subject events Plaintiff STEVEN was 41 years old and employed as an electrician with  
20 Hawthorne Machinery, and Plaintiff JOANNA was 35 years old and employed as a  
21 sales/customer manager for a clothing company.

22 16. Neither Plaintiff STEVEN nor JOANNA have ever had any prior contact with  
23 H.H.S.A.

24 17. Plaintiffs STEVEN and JOANNA had two natural pregnancies in 2008 and 2010  
25 resulting in the birth of their two children Plaintiffs D.S. and R.S. The children are and  
26 always have been healthy during their young lives and have met their developmental  
27 milestones and are on target for their age.

28 18. The family moved to San Diego in 2002 and have resided in San Diego

1 continually since then.

2 19. On May 16, 2011 JOANNA received a phone call from R.S. and D.S.'s daycare  
3 provider, Shelley McCoshum (hereafter "McCoshum"). R.S. and D.S. had been enrolled  
4 at her in home daycare for just over one month at the time the subject events occurred.  
5 During the call, McCoshum told JOANNA that some redness had developed on R.S.'s  
6 face.

7 20. McCoshum said that she did not know where the redness came from, possibly an  
8 allergic reaction or fall on the trampoline, but that it developed sometime after R.S. had  
9 arrived that day.

10 21. JOANNA picked R.S. and D.S. from McCoshum's, and upon her evaluation of  
11 the redness, she noticed that it did not look like a "fall" or "allergic reaction," and in  
12 addition to the redness, there was also bruising under R.S.'s eyes. JOANNA immediately  
13 called her doctor's office, Kaiser Permanente, and an appointment was set for the  
14 following day, May 17, 2011.

15 22. On May 17, 2011, Dr. Andrea Siano at the Clairemont Mesa Kaiser evaluated Dr.  
16 Siano reported the injury to H.H.S.A. as required by law.

17 23. The doctors in the emergency room who evaluated R.S. and D.S. did not believe  
18 that the injuries to R.S. were inflicted by JOANNA and/or STEVEN. The May 17, 2011  
19 emergency room records state in part: "Parents are completely appropriate and I do not  
20 suspect any cause for concern about the parents decision making."

21 24. During the emergency room visit, Dr. Siano spoke with a CPS worker and faxed  
22 a CPS report to their office on May 17, 2011. She indicated to CPS that she did not  
23 suspect the parents of the injuries to R.S.

24 25. Both R.S. and D.S. were examined in the Clairemont Kaiser emergency room.  
25 CT testing as well as a "Baby Gram" were suggested for R.S. After being advised of the  
26 substantial, long-term, risks involved with the further testing for R.S., JOANNA and  
27 STEVEN wanted to consult, the following day, with the childrens' primary pediatrician,  
28 Dr. Rachel Ireland. The doctors in the emergency room approved this course of action.

1 26. After JOANNA and STEVEN arrived home from Kaiser at approximately  
2 11:00 p.m. on May 17, 2011, BRYSON and three uniformed police officers arrived at the  
3 Swartwood home. Thinking that the Police and H.H.S.A. defendants wanted to talk about  
4 the possible abuse by the day care provider, JOANNA and STEVEN invited them into  
5 their home. BRYSON then demanded separate interviews with JOANNA and STEVEN.

6 27. Plaintiff JOANNA and STEVEN denied that they had ever abused either of their  
7 children. They repeatedly told this to BRYSON during the home invasion, and at no time  
8 during the investigation was there any allegation or evidence that R.S. and/or D.S. was  
9 abused or neglected by either of their parents.

10 28. After the interviews, at approximately 12:30 a.m. on May 18, 2011, BRYSON,  
11 after consulting with her supervisors, ordered the police officers to remove R.S. and D.S.  
12 from the home and told JOANNA and STEVEN they R.S. and D.S. were going to be taken  
13 to POLINSKY.

14 29. JOANNA and STEVEN were not allowed to see or talk to either of their children  
15 for two days.

16 30. COUNTY employee, BRYSON, and her supervisors' removal of R.S.  
17 and D.S. on May 18, 2011 from the family home was done without Court order, without  
18 the consent of either parent, and without any specific articulable evidence that provided  
19 reasonable cause to believe that each child was in imminent danger of serious bodily injury  
20 from either, or both, parents; and such intrusions upon the parents' and the minors' rights  
21 were not reasonably necessary to avert any suspected injury to said minors.

22 31. Plaintiffs are informed and believe that R.S. and D.S., while at POLINSKY,  
23 were subjected to an invasive physical examination without any medical need or urgency,  
24 without Court order, without consent of either of their parents, and without both, or either,  
25 parent being present; all of which constituted a violation of R.S and D.S.'s and their  
26 parents' rights.

27 32. Thereafter on May 18 and 19, 2011, JOANNA and STEVEN were not allowed to  
28 visit or talk to their children while they were at POLINSKY. The children were returned,

1 without explanation or apology on May 19, 2011.

2 33. The removal and detention, and continued detention, of the minor Plaintiffs  
3 from the care and custody of Plaintiffs' JOANNA and STEVEN, was by the joint actions  
4 of, and in concert with, the aforementioned agents and employees of the Defendant  
5 COUNTY, and each of them, and was done without probable, reasonable or just cause, and  
6 by failing to provide exculpatory and favorable evidence, by providing false and  
7 misleading evidence, by the use of undue influence, coercion and/or duress and when they  
8 knew the minor children were not in imminent danger of serious bodily injury and and  
9 without determining whether the scope of the intrusion was reasonably necessary to avert  
10 the specific injury; and therefore was in violation of clearly established legal authority (See  
11 *Mabe v. San Bernardino County, Dept. Of Pub. Servs.* 237 F.3d 1101 (9<sup>th</sup> Cir. 2001),  
12 *Wallis v. Spencer* 202 F.3d 1126 (9<sup>th</sup> Cir. 2000), as confirmed in *Rogers v. County of San*  
13 *Joaquin* 487 F. 3d 1288 (9<sup>th</sup> Cir. 2007), and was a violation of Plaintiffs' constitutional  
14 rights under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, and  
15 Article 1, Section 1 of the California State Constitution (including the right of privacy).

16 34. From and after May 17, 2011, and thereafter, Defendants COUNTY, and all  
17 named Defendants, and Does 1 to 50, acted together in initiating and conducting  
18 investigations and proceedings, and related matters and conduct, pursuant to (Section 200)  
19 of Part 1 of Division 2 of the California Welfare and Institutions Code relating to  
20 allegations of child abuse and/or neglect; and did so without any just or reasonable cause,  
21 and in violation of both statutory and case law, and with an intent by Defendants to cause  
22 injury to Plaintiffs, or with a willful and conscious disregard of the Plaintiffs' rights or  
23 safety, carried out, initiated, performed, authorized and/or conducted, with the knowledge,  
24 consent, authorization and in concert with all other Defendants, including but not limited  
25 to the following:

- 26 a. By using false, coercive, intimidating, abusive, demeaning and improper
- 27 conduct during their investigation of Plaintiffs;
- 28 b. By removing the minor Plaintiffs from the care, custody and control of their



parents JOANNA and STEVEN, and thereafter continuing to detain them until May 19, 2011, without just or reasonable cause, without consent of JOANNA and STEVEN, without the existence of imminent danger of serious bodily injury to said children and without determining whether the scope of the intrusion was reasonably necessary to avert the specific injury; (in violation of *Mabe v. County of San Bernardino* 237 F.3d 1101 (9<sup>th</sup> Cir. (2001); and *Wallis v. Spencer* 202 F.3d 1126 (9<sup>th</sup> Cir. 2000) ; as confirmed by *Rogers v. County of San Joaquin* 487 F.3d 1288 (9<sup>th</sup> Cir. 2007) and other applicable case and statutory law);

- c. By conducting unauthorized invasive physical examinations of the children without the consent of, or presence of JOANNA and STEVEN;
- d. Plaintiffs submit that further matters and issues will be shown upon receipt and disclosure of the records and files of the Juvenile Court and H.H.S.A.. which are not available to Plaintiffs due to confidentiality and the requirements of Welf. & Inst. Code §§ 827 and 828; and therefore, further grounds will be shown by amendment or at the time of trial or further proceedings in this matter.

35. The aforesaid conduct of Defendants, and their agents or employees in removing the children from the care and custody of their parents, in using coercion, intimidation and duress upon Plaintiffs, in presenting the aforesaid false, misrepresented and fabricated evidence, was done jointly and in concert by the individual Defendants and Does 1 through 50, inclusive, to cause injury to the Plaintiffs, or was despicable conduct carried on with the willful and conscious disregard of the Plaintiffs' rights or safety.

36. As a result of the joint actions of the Defendants, and each of them, occurring between the period of on or about May 17, 2011 through and including May 19, 2011, Plaintiffs have suffered, and will continue to suffer damages, including, but not limited to, physical injuries and/or severe emotional distress, and other damages to be shown according to proof, as a result of these violations of their personal and civil rights of

1 freedom of speech and association, due process, familial association, and to secure in their  
2 person and home.

3 37. The Plaintiffs have submitted a Government tort claim to the COUNTY on or  
4 about November 16, 2011. Said claim was denied by COUNTY on January 4, 2012.

5 **FIRST CAUSE OF ACTION ASSAULT AND BATTERY - By Plaintiff Minors**  
6 **R.S. and D.S. Against ALL DEFENDANTS, and Does 1 through 50, Inclusive**

7 38. Plaintiff realleges, adopts and incorporated as if set forth at length, and to the  
8 extent applicable, paragraphs 1 through 37.

9 39. That Defendants, and Does 1 through 50, Inclusive, by their conduct intended to  
10 cause, and did cause, Plaintiffs minors R.S. and D.S. great apprehension and fear of  
11 harmful contact to their person by, but not limited to, their removal and detention from  
12 their Parents Plaintiff JOANNA and STEVEN, by making false accusations of physical  
13 abuse and neglect of Plaintiff minors R.S. and D.S. , including for use as testimony and  
14 evidence in the aforementioned Juvenile Court proceedings.

15 40. Further, Defendants, and Does 1 through 50 did cause the great apprehension and  
16 fear of harmful contact by Plaintiff minors R.S. and D.S. to their persons, by but not  
17 limited to, their conduct in or unlawful authorization of the physical examination,  
18 including, but not limited to, x rays, blood tests and sexual abuse examination, and/or  
19 treatment of Plaintiff minors R.S. and D.S. without the consent of their parents, without  
20 their presence, and without court order or just cause; the scope of which is not yet fully  
21 known.

22 41. All Defendants, and Does 1 through 50, Inclusive, with the encouragement,  
23 knowledge, advice, counsel and at the request, direction, authorization and/or agreement  
24 of the other Defendants, acted with the intent to make, and did make, or caused others to  
25 make, harmful contacts with Plaintiff minors R.S. and D.S.'s bodies while unlawfully  
26 removing and detaining, continuing to detain, and authorizing or conducting the unlawful  
27 physical examination referenced above. At no time did Plaintiff minors, constructively or  
28 otherwise, consent to such contact, nor was any proper consent obtained by law, by court



1 order, or from their parents.

2 42. Defendant COUNTY, is vicariously responsible for the conduct of said  
3 Defendants under Government Code § 815.2.

4 43. As a direct and legal result of Defendants' tortious and unlawful conduct,  
5 Plaintiff minors R.S. and D.S. have suffered extreme physical, mental and/or emotional  
6 distress, including anguish and fear to an extent and in an amount to be proven at trial.

7 44. All individual Defendants, and Does 1 through 50, Inclusive, acted with malice  
8 and with the intent to cause injury to Plaintiffs minors R.S. and D.S. , or acted with a  
9 willful and conscious disregard of the rights of said minor Plaintiffs, in a despicable  
10 manner. Therefore, minor Plaintiffs are entitled to an award of punitive damages for the  
11 purpose of punishing ALL INDIVIDUAL Defendants, and Does 1 through 50, Inclusive,  
12 to deter them and others from such conduct in the future.

13 **SECOND CAUSE OF ACTION BATTERY - By Plaintiffs R.S. and D.S. Against**  
14 **All Defendants, and Does 1 through 50, Inclusive**

15 45. Plaintiffs reallege, adopt and incorporate as if set forth at length, and the extent  
16 applicable, paragraphs 1 through 44.

17 46. All Defendants, and Does 1 through 50, Inclusive, with the encouragement,  
18 knowledge, advice, counsel and at the request, direction, authorization and/or agreement  
19 of the other Defendants, acted with the intent to make, and did make, or caused others to  
20 make, harmful contacts with Plaintiff minors R.S. and D.S.'s bodies while unlawfully  
21 removing, detaining, and continuing to detain them. At no time did Plaintiff minors  
22 constructively or otherwise, consent to such contact, nor was any proper consent obtained  
23 by law, by court order, or from their parents.

24 47. Plaintiffs are also informed and believe that on or after May 17, 2011, All  
25 Defendants, and Does 1 through 50, Inclusive, conducted medical examinations and  
26 procedures on Plaintiff minors R.S. and D.S. without the knowledge, consent,  
27 authorization of their parents, Plaintiffs JOANNA and STEVEN, without the consent or  
28 presence of Plaintiffs JOANNA and STEVEN, and without any order or warrant for such

1 examination, in violation of Plaintiff minors' rights, and in violation of Plaintiff JOANNA  
2 and STEVEN'S rights, including those as set forth in clear and established law in the case  
3 of *Wallis v. Spencer*, 202 F.3d 1126 (9<sup>th</sup> Cir. 2000).

4 48. As a direct and legal result of Defendants' wrongful, tortious and unlawful  
5 conduct, Plaintiff minors R.S. and D.S. have suffered extreme physical, mental and/or  
6 emotional distress and injuries, including anguish and fear to an extent and in an amount  
7 to be proven at trial.

8 49. ALL INDIVIDUAL DEFENDANTS and Does 1 through 50, Inclusive, acted  
9 with malice and with the intent to cause injury to Plaintiff minors R.S. and D.S. , or acted  
10 with a willful and conscious disregard of the rights of said Plaintiff minors, in a despicable  
11 manner. Therefore, Plaintiff minors are entitled to an award of punitive damages for the  
12 purpose of punishing ALL INDIVIDUAL DEFENDANTS, and Does 1 through 50,  
13 Inclusive, to deter them and others from such conduct in the future.

14 **THIRD CAUSE OF ACTION - FALSE IMPRISONMENT - BY PLAINTIFF**  
15 **MINORS R.S. and D.S. Against All Defendants and Does 1 through 50, Inclusive**

16 50. Plaintiffs reallege, adopt and incorporate as if set forth at length, and to the  
17 extent applicable, paragraphs 1 through 49.

18 51. All Defendants, and Does 1 through 50, Inclusive, unlawfully removed, detained,  
19 and continued to detained Plaintiff minors R.S. and D.S. without evidence of any  
20 imminent danger of serious bodily injury, without just or reasonable cause, without  
21 consent of their parents Plaintiff JOANNA and STEVEN, and/or without probable cause;  
22 and therefore deprived them of their personal civil liberties. The unlawful removal, and  
23 thereafter the continued detention of said minors, as part of a dependency investigation  
24 commenced on May 17, 2011, and lasted continuously until May 19, 2011.

25 52. Defendant COUNTY, is vicariously responsible for the conduct of these  
26 Defendants under Government Code § 815.2.

27 53. As a legal result of Defendants' actions, Plaintiff minors R.S. and D.S. were  
28 physically, mentally and/or emotionally injured, all to an extent and in an amount subject

1 to proof at trial.

2 54. All individual Defendants, and Does 1 through 50, Inclusive, acted with malice  
3 and with the intent to cause injury to Plaintiff minors R.S. and D.S., or acted with a willful  
4 and conscious disregard of the rights of said Plaintiffs in a despicable manner. In addition,  
5 said Defendants, and each of them, engaged in despicable conduct that subjected Plaintiff  
6 minors R.S. and D.S. to cruel and unjust hardship in conscious disregard of their rights.  
7 Therefore, Plaintiff minors R.S. and D.S. are entitled to an award of punitive damages for  
8 the purpose of punishing ALL INDIVIDUAL Defendants, and Does 1 through 50,  
9 Inclusive, to deter them and others from such conduct in the future.

10 **FOURTH CAUSE OF ACTION VIOLATION OF CIVIL RIGHTS**  
11 **UNDER 42 U.S.C. § 1983 BY ALL PLAINTIFFS AS AGAINST**  
**ALL INDIVIDUAL DEFENDANTS**

12 55. Plaintiffs adopt and incorporate as if set forth at length, and to the extent  
13 applicable, paragraphs 1 through 54.

14 56. Commencing on or about May 17, 2011, and continuing through May 19, 2011,  
15 All Individual Defendants, and Does 1 through 50, Inclusive, and each of them, as alleged  
16 herein, were acting under color of state law when they knew and agreed, and thereby  
17 conspired, to unlawfully detain, seize, question, threaten, examine, treat, coerce and/or  
18 initiate and pursue an investigation and proceedings (without any basis) as to Plaintiff  
19 minors R.S. and D.S. and to cause said minors to be removed from the care, custody, and  
20 control of their parents JOANNA and STEVEN on or about May 17, 2011, and to become  
21 dependents of Defendants COUNTY, and continued such removal and dependency of the  
22 COUNTY until May 19, 2011, and did so without proper reason or authority (i.e. see *Mabe*  
23 *v. County of San Bernardino*, 237 F. 3<sup>rd</sup> 1101 (9<sup>th</sup> Cir. (2001); *Rogers v. County of San*  
24 *Joaquin*, 487 F.3d 1288 (9<sup>th</sup> Cir. 2007); California Welf. and Inst. Code §§ 306, 309, 311  
25 and 319), without reasonable probable cause, and with deliberate indifference to the rights  
26 of said Plaintiffs.

27 57. The aforesaid Defendants, and each of them, conspired to interfere with and  
28 violate the civil rights of the Plaintiffs, as set forth under 42 U.S.C. § 1983, including

1 violation of the Plaintiffs' rights found in the First, Fourth and Fourteenth Amendments  
 2 of the United States Constitution, by, but not limited to, acting and conspiring to force  
 3 Plaintiff PARENTS to relent to their demands, by retaliating against Plaintiffs for exercise  
 4 of their freedom of speech, and by removing, detaining and continuing to detain, the  
 5 person and/or physical and legal custody of minors plaintiffs R.S. and D.S. from the care,  
 6 custody, and control of their parents, JOANNA and STEVEN, without proper or just cause  
 7 and/or authority; by the use of intimidation, coercion and duress, and by using false and  
 8 fabricated evidence and testimony, and failing to provide exculpatory evidence, during the  
 9 investigation and initiation and pendency of the dependency proceedings, including the  
 10 application for a warrant for the removal of minors R.S. and D.S. , in violation of, and  
 11 interference with, the Plaintiffs' constitutional liberty interests under the First Amendment,  
 12 their fundamental rights to familial association and due process under the Fourteenth  
 13 Amendment, and in violation of Fourth Amendment rights against unreasonable searches  
 14 and seizures.

15 58. As a direct result of these Individual Defendants' violations, and in accordance with  
 16 42 U.S.C. §1983, Plaintiffs civil rights have been violated in that they have suffered, and  
 17 will continue to suffer damages, including but not limited to, physical and/or mental  
 18 anxiety and anguish; as well as to incur attorneys fees, costs and expenses in the  
 19 underlying case, and in the matter, as authorized by 42 U.S.C. §1988 in an amount not yet  
 20 ascertained, all of which shall be shown according to proof at trial.

21 59. Said individual Defendants' wrongful conduct as herein alleged was intentional,  
 22 done with malice, and with conscious disregard for the rights of the Plaintiffs herein, and  
 23 as a result of their despicable conduct, Plaintiffs are therefore entitled to recover punitive  
 24 damages from said individual Defendants' wrongful acts for the purposes of punishing  
 25 said Defendants and to deter others from such conduct in the future.

26 **FIFTH CAUSE OF ACTION - MONELL RELATED CLAIMS**  
 27 **By Plaintiffs Against the COUNTY, POLINSKY and H.H.S.A.**

28 60. Plaintiffs reallege, adopt and incorporate as if set forth at length, and to the extent

1 applicable, paragraphs 1 through 59.

2 61. At all relevant times herein, Defendants COUNTY, POLINKSY, including through  
 3 its H.H.S.A. agency, established and/or followed policies, procedures, customs and/or  
 4 practices (hereinafter collectively referred to as “policy” or “policies”) which policies were  
 5 the cause of violation of Plaintiffs’ constitutional rights granted to them pursuant to 42  
 6 U.S.C. § 1983, as well as the case of *Monell v. New York City Department of Social*  
 7 *Services* (1978) 436 U.S. 658, including those under the First, Fourth and Fourteenth  
 8 Amendments; including but not limited to:

- 9 a. The policy of using undue influence, coercion and/or duress to cause parents  
 10 to enter into alleged “voluntary” agreements, including with the threat of  
 11 removal of their children if they do not do so.
- 12 b. The policy of detaining and/or removing children from their parents without  
 13 exigent circumstances (imminent danger of serious bodily harm), court order  
 14 or consent of their parent or legal guardian;
- 15 c. The policy of detaining and/or removing children from their parents and  
 16 failing to determine whether the scope of the intrusion was reasonably  
 17 necessary to avert the specific injury;
- 18 d. The policy of removal and detention of minor children without a judicial  
 19 order even in the absence of exigent circumstances;
- 20 e. The policy of causing minor children to be dependents of the County, and  
 21 continuing to be dependents, removing their legal and physical custody from  
 22 their parents beyond a reasonable period after the alleged basis for any such  
 23 removal and continued detention is negated;
- 24 f. The policy of using intimidation, fear, threats, coercion, retaliation,  
 25 misrepresentation and duress during their investigation of allegations of child  
 26 abuse and/or neglect, and during the pendency of dependency proceedings;
- 27 g. The policy of using trickery, duress, fabrication and/or false testimony or  
 28 evidence, and in failing to provide exculpatory evidence, in preparing and

1 presenting reports and court documents to the Court, causing an interference  
2 with the Plaintiffs' rights, including those as to due process and familial  
3 relations and injuring and harming them;

4 h. The policy of removal and continued detention of children based upon the  
5 parent(s)' failure to admit the unproven abuse allegations;

6 i. The policy of physical examination of minor child(ren), without judicial  
7 order, exigent circumstances, or notification to parent;

8 j. The policy of prohibiting parents to be present at physical examinations  
9 and/or treatment of their child(ren);

10 k. The policy of signing and preparing petitions and reports in dependency  
11 actions under the penalty of perjury without personal knowledge of the truth  
12 and/or accuracy of the allegations contained therein;

13 l. The policy of causing medical examinations, treatment and/or procedures of  
14 a minor child without the knowledge, consent, presence, and/or authorization  
15 of the parent(s) or legal guardians, and without exigency (imminent danger  
16 of serious bodily harm), without medical need or urgency, and without court  
17 order;

18 m. The policy of failing to promptly provide exculpatory and/or relevant and  
19 related evidence, testimony, reports and information regarding the ongoing  
20 investigation of juvenile dependency matters, when such information would  
21 negate the basis for continued detention of the minor children; and

22 n. By acting with deliberate indifference in implementing a policy of inadequate  
23 training, and/or by failing to train and supervise its officers, agents and  
24 employees, in providing the Constitutional protections guaranteed to  
25 individuals, including those under the First, Fourth and Fourteenth  
26 Amendments, and under California law, when performing actions related to  
27 the investigation of child abuse and neglect, including dependency type  
28 proceedings.



- 1           o.     The policy of first placing without just cause or due process the names of the  
2                 those accused of abusing and or neglecting their children on the CACI, and  
3                 then refusing to remove, or request the removal, of those names once the  
4                 Court has found that the allegations are untrue.

5           (The list is not exhaustive due to the pending nature of discovery and the privileged  
6     and protected records of investigative and juvenile records, which are subject to access,  
7     use and/or disclosure pursuant to California Welf. & Inst. Code §§ 827 and 828).

8     62.     Defendants COUNTY, as well as POLINSKY and H.H.S.A. as an agent of the  
9     COUNTY, had a duty to Plaintiffs at all times to establish, implement and follow policies,  
10    procedures, customs and/or practices which confirm and provide for the protections  
11    guaranteed them under the United States Constitution, including the First, Fourth and  
12    Fourteenth Amendments; to use reasonable care to select, supervise, train, control and  
13    review the activities of all agents, officers and employees in their employ, including within  
14    H.H.S.A.; and further, to refrain from acting with deliberate indifference to the  
15    Constitutional rights of Plaintiffs herein so as to not cause them the injuries and damages  
16    alleged herein.

17    63.     COUNTY breached its duties and obligations to Plaintiffs, including but not limited  
18    to, failing to establish, implement and follow the correct and proper Constitutional policies,  
19    procedures, customs and practices; by failing to properly select, supervise, train, control,  
20    and review their agents and employees as to their compliance with Constitutional  
21    safeguards; and by permitting named Defendants, and Does 1 through 50, Inclusive, to  
22    engage in the unlawful and unconstitutional conduct as herein alleged.

23    64.     Defendants knew, or should have known, that by breaching the aforesaid duties and  
24    obligations that it was foreseeable that they would, and did, cause Plaintiffs to be injured  
25    and damaged by their wrongful policies and acts as alleged herein and that such breaches  
26    occurred in contravention of public policy and as to their legal duties and obligations to  
27    Plaintiffs.

28    65.     These actions, or inactions, of Defendants are the legal cause of injuries to Plaintiffs

1 as alleged herein; and as a result thereof, Plaintiffs have sustained general and special  
 2 damages, as well as incurring attorneys fees, costs and expenses, including those as  
 3 authorized by 42 U.S.C. § 1988, to an extent and in an amount subject to proof at trial.

4 **SIXTH CAUSE OF ACTION - INTENTIONAL INFLICTION OF**  
 5 **EMOTIONAL DISTRESS - By Plaintiffs Against All Defendants**

6 66. Plaintiffs reallege, adopt and incorporate as if set forth at length, and to the  
 7 extent applicable, paragraphs 1 through 65.

8 67. All Defendants, and Does 1 through 50, Inclusive, engaged in the aforementioned  
 9 outrageous, unprivileged conduct as set forth herein, including, but not limited to; by  
 10 forcing Plaintiff Parents to enter into alleged “voluntary” agreements; by retaliating  
 11 against Plaintiffs, for the Plaintiff Parents exercise of their right of free speech; by using  
 12 coercion, undue influence, and duress to force a parent to admit the allegations in order  
 13 to regain custody of their child(ren) by wrongfully and unlawfully removing, detaining,  
 14 and the continued detention, of minors R.S. and D.S.; by investigating and questioning  
 15 Plaintiffs with intimidation, coercion and duress; by falsely and maliciously alleging and  
 16 reporting that the physical health and safety of minors R.S. and D.S. were threatened by  
 17 their parents; by failing to provide evidence and information which would negate removal  
 18 and continued detention of Plaintiff minors, including when properly and reasonable  
 19 requested; and, by causing the minor children to be physically examined, including  
 20 without their parent(s)’ presence.

21 68. Defendant COUNTY is vicariously responsible for these Defendants’ conduct under  
 22 Government Code §815.2; and said conduct is not immunized, including by Government  
 23 Code §820.21

24 69. These Defendants intended to cause, or acted in reckless disregard of causing,  
 25 physical and emotional distress when they engaged in such conduct, which they knew not  
 26 to be true and proper.

27 70. As a legal result of Defendants’ tortious conduct, Plaintiffs, and each of them,  
 28 suffered physical and emotional distress, including, but not limited to, fright, nervousness,

1 anxiety, worry, mortification, shock, humiliation and indignity to an extent and in an  
2 amount subject to proof at trial.

3 71. All individual Defendants, and Does 1 through 50, Inclusive, knowingly and  
4 willfully acted with malice and oppression and with the intent to harm Plaintiffs in a  
5 despicable manner and their conduct shocks the conscience. Therefore, Plaintiffs are  
6 entitled to an award of punitive damages for the purpose of punishing these individual  
7 Defendants and to deter them and others from such conduction in the future.

8 **SEVENTH CAUSE OF ACTION VIOLATION OF STATE CIVIL RIGHTS**  
9 **(UNDER CALIFORNIA CIVIL CODE § 43) AGAINST ALL DEFENDANTS**  
10 **- By All Plaintiffs**

11 72. Plaintiffs reallege, adopt and incorporate as if set forth at length, and to the extent  
12 applicable, paragraphs 1 through 71 herein.

13 73. All Defendants, and Does 1 through 50, Inclusive, are individuals who were acting  
14 under color of law in conducting an investigation and proceedings pursuant to California  
15 and federal law, including as to proceedings described in California Government Code §  
16 820.21(a), and, including, but not limited to, the required compliance to California Welfare  
and Institutions Code Sections:

17 -290.1 (regarding the requirements when taking a child into custody and  
18 immediately filing a petition including as to the requirements in *Mabe v. San*  
19 *Bernardino County, Dept. Of Pub. Servs.* (9<sup>th</sup> Cir. 2001) 237 F.3d 1101, 1107);

20 -300 (including regarding the disruption of or intrusion into family life);

21 -305 (regarding conditions allowing temporary custody without warrant);

22 -306 (including regarding the conditions in which to take, and maintain, custody of  
23 a minor without a warrant to remove);

24 -307 (including regarding required notice to parents and giving preference to  
25 alternatives which least interfere with parents custody of the minor);

26 -307.4 and 308 (regarding providing immediate notice to parents and other certain  
27 rights);

28 -309 (including regarding the conditions required to investigate the facts and

1 circumstances of a minor taken into custody and when to release said minor to the  
 2 custody of his parent or guardian, or to temporarily place the minors);  
 3 -311 (regarding the requirements of filing a petition pursuant to the requirements  
 4 of section 332);  
 5 -319 (including regarding the requirements of filing a court report regarding why  
 6 a minor has been removed and the need for continued detention);  
 7 -324.5 (regarding medical procedures of a child in protective custody), and  
 8 including as required in *Wallis v. Spencer* (9<sup>th</sup> Cir. 2000) 202 F.3d 1126; and  
 9 -332 (regarding the filing and contents of a petition).

10 74. To the extent not separately responsible, Defendant COUNTY is vicariously  
 11 responsible for these Defendants' conduct under Government Code §815.2; and said  
 12 conduct is not immunized, including by Government Code §820.21.

13 75. As a result of the conduct of said Defendants, and each of them, as adopted and  
 14 incorporated by paragraphs previously set forth herein, Defendants and each of them,  
 15 violated Plaintiffs' personal and civil rights, including the right of protection from  
 16 unwarranted and unlawful seizure, bodily restraint or harm, from personal and physical  
 17 insult and violation, from defamation and from injury to personal relation, as set forth in  
 18 California Civil Code §43, including by, but not limited to, by interfering, by threats,  
 19 intimidation, or coercion, or attempts thereto, in the exercise and enjoyment of Plaintiffs'  
 20 rights secured by the United States Constitution, other Federal laws, and the Constitution  
 21 and laws of the State of California (conduct not immunized by California's Government  
 22 Code § 820.21 and federal law), under color of law and by the use of fabrication of  
 23 evidence, failure to disclose exculpatory evidence, and by obtaining and/or attempting to  
 24 obtain, evidence and testimony by duress, fraud and undue influence. (Pursuant to  
 25 *Venegas v. County of Los Angeles* (2004) 32 Cal. 4<sup>th</sup> 820, Plaintiffs are not required to  
 26 make a showing of discriminatory intent or show that they are members of a protected  
 27 classification to exercise these rights.)

28 76. The acts of Defendants that are previously alleged in this Complaint, and

1 incorporated by the references herein to the extent applicable, interfered, or attempted to  
 2 interfere, with the exercise of Plaintiffs' personal and civil rights under the laws and  
 3 Constitution of the State of California, including the Plaintiffs' right of privacy and those  
 4 rights under Civil Code § 43, as well as the laws and the Constitution of the United States,  
 5 as stated herein.

6 77. As a direct and proximate result of the aforementioned conduct of Defendants, and  
 7 each of them, Plaintiffs have suffered and will continue to suffer damages, including but  
 8 not limited to, great emotional and psychological distress, humiliation and mental anguish,  
 9 the nature and amount of which will be shown according to proof at trial.

10 78. These violations of the Plaintiffs' personal and civil rights by Defendants, and Does  
 11 1 through 50, Inclusive, and each of them, are protected and guaranteed by California Civil  
 12 Code § 52.1 entitling Plaintiffs to damages and relief, including damages under California  
 13 Civil Code § 52, other equitable relief, punitive damages, injunctive relief, statutory civil  
 14 penalty (including \$25,000.00 as to each individual Defendant) and attorneys' fees  
 15 (pursuant to CC § 52.1(h)), all of which are requested herein.

16 79. In doing the acts alleged in this Complaint, Defendants, and each of them, knew or  
 17 should have known, that their actions were likely to , or would injure and damage  
 18 Plaintiffs, and Plaintiffs are informed and believe, and thereon allege, that the individual  
 19 Defendants, and each of them, intended to cause injury and damage to Plaintiffs, and/or  
 20 acted with a willful and conscious disregard of Plaintiffs' rights, thus entitling Plaintiffs  
 21 to recover punitive damages as against said individual Defendants.

22 **EIGHTH CAUSE OF ACTION VIOLATION OF STATE CIVIL RIGHTS §52.1**  
 23 **AGAINST ALL DEFENDANTS - By All Plaintiffs**

24 80. Plaintiffs reallege, adopt and incorporate as if set forth at length, and to the extent  
 25 applicable, paragraphs 1 through 79 herein.

26 81. All Individual Defendants, and Does 1 through 50, Inclusive, are individuals who  
 27 were acting under color of law in conducting an investigation and proceedings pursuant  
 28 to California law, including as to proceedings described in Government Code § 820.21(a).

1 82. To the extent not separately responsible, Defendant COUNTY is vicariously  
2 responsible for these Defendants' conduct under Government Code § 815.2; and said  
3 conduct is not immunized, including by Government Code §820.21.

4 83. As a result of the conduct of said Defendants, and Does 1 through 50, Inclusive, as  
5 adopted and incorporated by paragraphs previously set forth herein, Defendants and each  
6 of them, have violated Plaintiffs' rights by interfering with Plaintiffs' rights by threats,  
7 intimidation, or coercion, or attempts thereto, including to force Plaintiffs to conform to  
8 their demands, and in retaliation of Plaintiffs' exercise of their rights, causing the violation  
9 and interference with the exercise or enjoyment of Plaintiffs' rights secured by the laws  
10 and Constitution of the United States, and the Constitution and laws of the State of  
11 California, including by using fabricated evidence, failure to disclose exculpatory  
12 evidence, and by obtaining and/or attempting to obtain, evidence and testimony by duress,  
13 fraud and undue influence, in juvenile dependency investigations and proceedings.

14 84. As a direct and proximate result of the aforementioned conduct of Defendants, and  
15 each of them, Plaintiffs have suffered and will continue to suffer damages, including great  
16 emotional and psychological distress, humiliation and mental anguish, the nature and  
17 amount of which will be shown according to proof at trial.

18 85. These violations of the Plaintiffs' rights by Defendants, and Does 1 through 50,  
19 Inclusive, and each of them, are guaranteed and protected by Civil Code §52.1 entitling  
20 Plaintiffs to damages and relief, including compensatory and punitive damages, other  
21 equitable relief, injunctive relief, statutory civil penalty (including \$25,000.00 as to each  
22 individual Defendant) and attorneys' fees, all of which are requested herein.

23 86. In doing the acts alleged in this Complaint, Defendants, and each of them, knew or  
24 should have known, that their actions were likely, or would, to injure and damage  
25 Plaintiffs, and Plaintiffs are informed and believe, and thereon allege, that the individual  
26 Defendants, and each of them, intended to cause injury and damage to Plaintiffs, and/or  
27 acted with a willful and conscious disregard of Plaintiffs' rights, thus entitling Plaintiffs  
28 to recover punitive damages as against said individual Defendants.



**PRAYER**

WHEREFORE, Plaintiffs request trial by jury and pray judgment against the Defendants as follows:

First Cause of Action ASSAULT AND BATTERY - By minor Plaintiffs R.S. and D.S. Against ALL Defendants, and Does 1 through 50, Inclusive

1. General damages in an amount to be determined by proof at trial.
2. Medical and related expenses in an amount to be determined by proof at trial.
3. Punitive damages as against the individual Defendants.
4. Costs of this action.
5. Interest according to law.
6. Any other and further relief that the Court considers proper.

Second Cause of Action BATTERY - By minor Plaintiffs R.S. and D.S. Against ALL Defendants, and Does 1 through 50, Inclusive

1. General damages in an amount to be determined by proof at trial.
2. Medical and related expenses in an amount to be determined by proof at trial.
3. Punitive damages as against individual Defendants only.
4. Costs of this action.
5. Interest according to law.
6. Any other and further relief that the Court considers proper.

Third Cause of Action FALSE IMPRISONMENT - By minor Plaintiffs R.S. and D.S. Against ALL Defendants, and Does 1 through 50, Inclusive

1. General damages in an amount to be determined by proof at trial.
2. Medical and related expenses in an amount to be determined by proof at trial.
3. Punitive damages as against individual Defendants only.
4. Costs of this action.

1           5.     Interest according to law.

2           6.     Any other and further relief that the Court considers proper.

3           Fourth Cause of Action VIOLATION OF CIVIL RIGHTS UNDER

4           42 U.S.C. §1983 - By Plaintiffs Against All Individual Defendants, and Does 1  
5           through 50, Inclusive

6           1.     General damages in an amount to be determined by proof at trial.

7           2.     Medical and related expenses in an amount to be determined by proof at trial.

8           3.     Punitive damages as against individual Defendants only.

9           4.     Attorney fees, costs and expenses as authorized by 42 U.S.C. § 1988  
10           according to proof.

11          5.     Interest according to law.

12          6.     Costs of this action.

13          7.     Any other and further relief that the Court considers proper.

14          Fifth Cause of Action - MONELL RELATED CLAIMS

15          By Plaintiffs Against the COUNTY , POLINSKY and H.H.S.A..

16          1.     General damages in an amount to be determined by proof at trial.

17          2.     Medical and related expenses in an amount to be determined by proof  
18               at trial.

19          3.     Attorney fees, costs and expenses as authorized by 42 U.S.C. § 1988  
20               according to proof.

21          4.     Interest according to law.

22          5.     Costs of this action.

23          6.     Any injunctive and other and further relief that the Court considers proper.

24          Sixth Cause of Action - INTENTIONAL INFLICTION OF EMOTIONAL

25          DISTRESS - By Plaintiffs Against All Defendants

26          1.     General damages in an amount to be determined by proof at trial.

27          2.     Medical and related expenses in an amount to be determined by proof at  
28               trial.

3. Punitive damages as against individual Defendants only.
4. Costs of this action.
5. Interest according to law.
6. Any other and further relief that the Court considers proper.

Seventh Cause of Action VIOLATION OF STATE CIVIL RIGHTS  
(UNDER CALIFORNIA CIVIL CODE § 43) AGAINST ALL DEFENDANTS  
By All Plaintiffs

1. General damages in an amount to be determined by proof at trial.
2. Medical and related expenses in an amount to be determined by proof at trial.
3. Punitive damages as against individual Defendants only.
4. Attorney fees, costs, penalties and expenses as authorized by law according to proof.
5. Interest according to law.
6. Costs of their action.
7. Any other and further relief that the Court considers proper.

Eighth Cause of Action VIOLATION OF STATE CIVIL RIGHTS §52.1  
AGAINST ALL DEFENDANTS - By All Plaintiffs

1. General damages in an amount to be determined by proof at trial.
2. Medical and related expenses in an amount to be determined by proof at trial.
3. Punitive damages as against individual Defendants only.

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4. Attorney fees, costs, penalties and expenses as authorized by law according to proof.
5. Interest according to law.
6. Costs of this action.
7. Any injunctive and other and further relief that the Court considers proper.

DATED: January 15, 2013

LAW OFFICE OF DONNIE R. COX

/s/ Donnie R. Cox

DONNIE R. COX, Attorney for Plaintiffs  
JOANNA and STEVEN SWARTWOOD; R.S. and  
D.S. minors by and through their Guardian Ad  
Litem, Judy Swartwood.